

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AEVOE CORP.,

Plaintiff(s),

vs.

AE TECH CO., et al.,

Defendant(s).

Case No. 2:12-cv-00053-GMN-NJK

ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
SEAL

(Docket No. 632, 646)

Pending before the Court are two motions to seal filed by Plaintiff related to the joint proposed pretrial order (“JPTO”) and the amended joint proposed pretrial order (“amended JPTO”). *See* Docket No. 632, 646. The motions to seal seek redaction of information designated as confidential by Plaintiff and information designated as confidential by Defendant AE Tech Co. (“AE Tech”). Both motions were served on AE Tech. *See* Docket Nos. 644, 648. AE Tech did not submit any declaration in support of the motions to redact the information it designated as confidential. The Court finds the pending motions to seal properly decided without oral argument. *See* Local Rule 78-2. For the reasons discussed more fully below, the motions to seal are both **GRANTED** in part and **DENIED** in part.

I. STANDARDS

In determining whether documents should be sealed in patent cases, the Court applies Ninth Circuit law. *See Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1220 (Fed. Cir. 2013). The Ninth Circuit has held that there is a strong presumption of public access to judicial records. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto. Ins.*

1 Co., 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file documents under seal bears the burden
 2 of overcoming that presumption. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)
 3 (quoting *Kamakana*, 447 F.3d at 1178). Parties “who seek to maintain the secrecy of documents
 4 attached to dispositive motions must meet the high threshold of showing that ‘compelling reasons’
 5 support secrecy.” *Kamakana*, 447 F.3d at 1180. Those compelling reasons must outweigh the
 6 competing interests of the public in having access to the judicial records and understanding the judicial
 7 process. *Id.* at 1178-79; *see also Pintos*, 605 F.3d at 679 & n.6 (court must weigh “relevant factors,”
 8 including the public’s interest in understanding the judicial process).¹

9 The Ninth Circuit has indicated that “‘compelling reasons’ sufficient to outweigh the public’s
 10 interest in disclosure and justify sealing court records exist when such ‘court files might have become
 11 a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
 12 scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (citing
 13 *Nixon v. Warner Commc’ns Inc.*, 435 U.S. 589, 598 (1978)); *see also Apple*, 727 F.3d at 1221-22
 14 (discussing competitive harm to business and the definition of “trade secret” adopted by the Ninth
 15 Circuit). On the other hand, “[t]he mere fact that the production of records may lead to a litigant’s
 16 embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court
 17 to seal its records.” *Kamakana*, 447 F.3d at 1179 (citing *Foltz*, 331 F.3d at 1136).

18 A party’s burden to show compelling reasons for sealing is not met by general assertions that the
 19 information is “confidential” or a “trade secret,” but rather the movant must “articulate compelling
 20 reasons supported by specific factual findings.” *Id.* at 1178. The Ninth Circuit has expressly rejected
 21 efforts to seal documents under the “compelling reasons” standard where the movant makes “conclusory
 22 statements about the contents of the documents—that they are confidential and that, in general,” their
 23 disclosure would be harmful to the movant. *Kamakana*, 447 F.3d at 1182; *see also Vaccine Ctr. LLC*
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25
 26 ¹ To the extent any confidential information can be easily redacted while leaving meaningful
 27 information available to the public, the Court must order that redacted versions be filed rather than sealing
 28 entire documents. *Foltz*, 331 F.3d at 1137; *see also In re Roman Catholic Archbishop of Portland in*
Oregon, 661 F.3d 417, 425 (9th Cir. 2011) (the district court must “keep in mind the possibility of redacting
 the sensitive material”)

1 v. *GlaxoSmithKline LLC*, 2013 U.S. Dist Lexis 68298, *5-6 (D. Nev. May 14, 2013) (finding insufficient
 2 general assertions regarding confidential nature of documents). Such “conclusory offerings do not rise
 3 to the level of ‘compelling reasons’ sufficiently specific to bar the public access to the documents.”
 4 *Kamakana*, 447 F.3d at 1182. In allowing the sealing of a document, the Court must base its decision
 5 on a compelling reason and must “articulate the basis for its ruling, without relying on hypothesis and
 6 conjecture.” *See, e.g., Pintos*, 605 F.3d at 679 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th
 7 Cir. 1995)).

8 **II. ANALYSIS**

9 As noted above, the motions to seal seek redaction of some information designated as
 10 confidential by Plaintiff and some designated as confidential by AE Tech. The Court will address the
 11 information in turn below.

12 A. Plaintiff’s Information

13 Plaintiff argues that compelling reasons exist for redacting information in Proposed Fact No. 14
 14 in Part III and Nos. 11-15 in Part V of the JPTO and amended JPTO. *See* Docket No. 632 at 4-6; Docket
 15 No. 646 at 4.² Plaintiff relies on the declaration of Jonathan Lin in asserting that this type of
 16 information is confidential and proprietary, and qualifies as a trade secret. *See, e.g.,* Docket No. 646 at
 17 4 (relying on declaration at Docket No. 507). For example, Plaintiff points to sales, manufacturing, and
 18 customer information. *See, e.g., id.* Mr. Lin also explains that Plaintiff keeps the cited information
 19 confidential and that its disclosure would be competitive disadvantageous. *See, e.g., id.* Plaintiff also
 20 points to the Court’s previous order sealing such information from the Cox Report. *See* Docket No. 511
 21 at 3. The Court finds that compelling reasons exist to seal this information that overcome the public’s
 22 interest in access. Accordingly, as to the above information, the motions to seal are **GRANTED**.

23 B. AE Tech’s Information

24 The balance of the information at issue in the motions to seal was designated as confidential by
 25 AE Tech. When the sole reason for seeking to seal information is that the opposing party has designated
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27 ² The portions of the JPTO and amended JPTO for which redaction is sought are identical. *See*
 28 Docket No. 646 at 2.

1 it as confidential, this Court has instructed that the designating party must submit a declaration
2 supporting the sealing request. *See, e.g.*, Docket No. 334. The Court has made clear that the failure to
3 file such a declaration may result in the Court ordering the information to be made public. *See, e.g., id.*
4 The pending motions were both served on AE Tech, Docket Nos. 644, 648, but it failed to submit a
5 declaration in support of them. Accordingly, the motions to seal are **DENIED** with respect to the
6 information designated as confidential by AE Tech.

7 **III. CONCLUSION**

8 For the reasons outlined above, the motions to seal are hereby **GRANTED** in part and **DENIED**
9 in part. Within 7 days of the issuance of this order, Plaintiff shall file on the public docket redacted
10 versions of the joint proposed pretrial order and the amended joint proposed pretrial order. Plaintiff
11 shall redact the confidential information contained in Proposed Fact No. 14 in Part III and Nos. 11-15
12 in Part V. Plaintiff shall not redact the information designated as confidential by AE Tech.

13 IT IS SO ORDERED.

14 DATED: November 12, 2014

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18 NANCY J. KOPPE
19 United States Magistrate Judge
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